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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,678	09/19/2003	Toshie Imai	MIPEP057	6257
25920 7590 03/03/2009 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				
EXAMINER				
VU, NGOC YEN T				
ART UNIT		PAPER NUMBER		
2622				
MAIL DATE		DELIVERY MODE		
03/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/665,678

**Applicant(s)**

IMAI, TOSHIE

**Examiner**

NGOC-YEN T. VU

**Art Unit**

2622

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 11, 12 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 11-12, 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Please note that the examiner has changed. Subsequent communications to the Office should be directed to the new examiner.

***Response to Amendment***

1. The amendments, filed on 09/26/08, have been entered and made of record. Claims 1, 11, 12 and 22-26 are pending.

***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 11, 12 and 22-26 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the independent claims 1, 11, 12 and 22, the Applicant argues that according to Yamaguchi, the characteristic range is set according to the back light information indicating whether the photographing processing is effected under a back light condition. The average densities of the three colors of R, G, and B are calculated by using all of the pixels included in the selected characteristic range. The average densities are calculated according to the characteristic range (i.e., the back light information). In this way, the average densities cannot be calculated without the back light information. The average densities are not used for the backlight decision. Therefore, the average densities are significantly different from the average brightness value specified in the presently claimed subject matter. Consequently, the Yamaguchi reference necessarily does not disclose (or suggest) the above-discussed features of the presently claimed subject matter. Thus, for at least this reason, the Yamaguchi reference does not disclose each and every feature of present claims 1, 11, 12, and 22. The examiner

respectfully disagrees. Yamaguchi teaches that densities of the human image relates to the average luminance (or brightness value) (col. 19:15-49). Yamaguchi further teaches that density of the human region has a distribution tendency of increasing when the average luminance of the color image is low and also has a distribution tendency of decreasing when the average luminance is low (col. 19: 50 – col. 20:40). Yamaguchi further teaches that the backlight decision is executed according to the average luminance (or brightness value) (col. 20:41 – col. 21:60). In light of the teaching in Yamaguchi, the examiner maintains that the Yamaguchi reference does disclose each and every feature of present claims 1, 11, 12, and 22.

With respect to the new claims 24-26, the Applicant argues that according to Yamaguchi, whether or not the photographing processing is effected under a back light condition is judged based on the photographing information recorded on the negative film. In contrast, in the subject matter defined in claims 24-26, the decision is based on the image data. As such, for at least this reason, the Yamaguchi reference does not disclose or suggest each and every feature of the subject matter defined in claims 24-26. The examiner respectfully disagrees. Yamaguchi does teach that the backlight condition is judged based in the image data which is generated by the CCD image sensor 28 via the projective optical system 26 (col. 10:59 - col. 11:25). In light of the teaching in Yamaguchi, the examiner maintains that the Yamaguchi reference does disclose each and every feature of present claims 24-26.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 11, 12 and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamaguchi (US #6,023,524).

Regarding *Claim 1*, Yamaguchi teaches an image processing device (Fig. 1) for processing an image using image data generated by an image generating device (col. 10:59 – col. 11:25), and image generation record information that is associated with the image data (col. 9 lines 7-8 - photographing information) and that includes operation information of the image generating device at the time that the image data is generated (col. 4:39 – col. 5:5, col. 8:39, col. 9:13-18, col. 9:66 – col. 10:8), the image processing device comprising:

a judging section configured to execute a backlight decision as to whether or not to execute backlight adjustment processing (Figs. 2, 6, 16 & 17; col. 20:41 – col. 21:60), based on both the image generation record information and the image data (image generation record information being the photographing information, and image data being the RGB values for each pixel included in the extracted effective region), wherein when the image generation record information includes subject position information indicating a position of a subject in the image, the judging section uses the subject position information in executing the backlight decision (col. 16:39-53; col. 19:15 – col. 20:40 - the effective region is based on the positional information when included in the photographing information); and

an image quality adjuster that, when it is decided to execute the backlight adjustment processing, executes backlight adjustment processing to increase brightness value of at least some pixels in the image data (Fig. 12, col. 2:63 – col. 3:42, col. 6:61– 65, col. 7:16–36, col. 23: 32 – col. 24: - pixels included in the effective region being a human face),

wherein the judging section analyses the image data with a weight distribution that has different magnitudes at the subject position (the effective region having approximately weight 1) and other positions (the non effective region or main regions having approximately weight 0) to calculate an average brightness in a partial area including the subject position (col. 19: 50 – col. 21:60) , and execute the backlight decision according to the analysis result (col. 16:47-53, col. 21:14 - col.23:21).

Regarding *Claim 11*, although the wording is different, the material is considered substantively equivalent to the material associated with claim 1 as discussed above.

Regarding *Claim 12*, although the wording is different, the material is considered substantively equivalent to the material associated with claim 1 as discussed above.

Regarding *Claim 22*, although the wording is different, the material is considered substantively equivalent to the material associated with claim 1 as discussed above.

Regarding *Claim 23*, although the wording is different, the material is considered substantively equivalent to the material associated with claim 1 as discussed above. However, Yamaguchi does not expressly disclose a computer-readable storage medium encoded with a computer program, the computer program comprising: a first program causing a computer to execute and a second program as claimed. Official Notice is taken by the Examiner that it would have been obvious to one having ordinary skill in the art at the time of the invention to embody the correction method taught by Yamaguchi to further as a computer program in order to provide an effective means to further enhance and implement the method of outing image as claimed.

Regarding *Claim 24*, although the wording is different, the material is considered substantively equivalent to the material associated with claim 1 as discussed above.

Regarding *Claim 25*, although the wording is different, the material is considered substantively equivalent to the material associated with claim 1 as discussed above.

Regarding *Claim 26*, although the wording is different, the material is considered substantively equivalent to the material associated with claim 23 as discussed above.

### *Conclusion*

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGOC-YEN T. VU whose telephone number is (571)272-7320. The examiner can normally be reached on Mon. – Thurs. from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on 571-272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/Ngoc-Yen T. VU/*  
*Primary Examiner, Art Unit 2622*  
*03/01/2009*